



POLICE DEPARTMENT

June 24, 2008

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Ricardo Santos
Tax Registry No. 916643
Bronx Court Section
Disciplinary Case No. 83634/08

This above-named member of the Department appeared before me May 12, 2008,
charged with the following:

1. Said Sergeant Ricardo Santos, assigned to the Bronx Court Section, on or about February 12, 2007, while on-duty, at approximately 2200 hours, having taken property into custody, did thereafter fail and neglect to prepare a Property Clerk's Invoice Worksheet (PD521-141a), as required.

PG 218-01 Page 1, Paragraph 3 – INVOICING PROPERTY
GENERAL PROCEDURE

2. Said Sergeant Ricardo Santos, assigned as indicated in Specification #1, on or about the date indicated in Specification #1, having taken property into custody, did thereafter fail and neglect to properly safeguard property, to wit: alleged marijuana confiscated from the person of a prisoner, resulting in the loss of alleged marijuana.

PG 203-10 Page1, Paragraph 5 – PUBLIC CONTACT- PROHIBITED CONDUCT
GENERAL REGULATIONS

3. Said Sergeant Ricardo Santos, assigned as indicated in Specification #1, on or about the date indicated in Specification #1, did fail and neglect to render police services in said sergeant's assigned area, in that said sergeant failed to arrange for the re-arrest of a prisoner found in possession of alleged marijuana while in custody.

PG 202-21 Page 1, Paragraph 8 – POLICE OFFICER DUTIES AND
RESPONSIBILITIES

4. Said Sergeant Ricardo Santos, assigned as indicated in Specification #1, on or about the date indicated in Specification #1, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said sergeant after becoming aware that evidence previously in his possession was lost, did fail and neglect to inform his Commanding Officer and/or the Internal Affairs Bureau Command of the missing evidence.

PG 203-10 Page 1, Paragraph 5- PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office and the Respondent was represented by Philip Mellea, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent having pleaded Guilty is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent is a thirteen year member of the Department currently assigned to the Bronx Central Booking. He stated that his responsibilities included that of an intake supervisor where he insures that all documentation is completed and that prisoners are secure in their cells. He further stated that on a normal 4:00 P.M. to 12:00 P.M. tour there are usually six to nine supervisors on duty.

The Respondent testified that on February 12, 2007, he worked the "4 to 12" tour and on that specific date there were only three supervisors present for duty. He stated

that it was a very busy tour because there were approximately 285 prisoners being processed through the system.

The Respondent stated that at one point during the tour, Police Officer Sanders approached him and stated that she had found marijuana on a prisoner. He told Sanders that he would take care of it and for her to leave the marijuana on his desk. He stated that “[t]he reason I left it on the desk was because there is not a safe there to safeguard narcotics or any kind of property.... If there was a safe there, I could probably put it in the safe and this matter would never have happened.” He added that he told Sanders that he would take care of it “because, in that circumstance, when you find marijuana on a prisoner, it’s not a crime, so to my understanding, I assume that the prisoner would get a summons for the offense because this is a violation. The prisoner should have just gotten a summons and that would have been it. This prisoner should have never been re-arrested.” He also noted that the prisoner “was originally arrested for marijuana. When she was searching the prison, she found another packet. It was like a black packet. I didn’t know what it was. I had no idea if it was marijuana or narcotics.... There was no way for me to determine that that was marijuana” because it had not yet been tested.

The Respondent stated that there is no vouchering of evidence done “in our facility. Vouchers are usually at the precincts. We don’t have vouchers in our facility.” He explained that when vouchering had to be done “we would tell a police officer from another precinct, from another area, because we can’t use our offices because we don’t have the man power. I can’t afford to lose one of my cops to go voucher anything because, god forbid, something happens in the facility, we don’t have the man power. You usually pick-up an officer from the street you tell them to voucher it. On that

specific day, I did question two officers and told them to voucher it, but they had a prisoner they had to take to the hospital so I did not want to intervene with that, with a sick prisoner, which is a priority in our facility.”

The Respondent testified that when he finished his tour for that day he did not go back to his desk to look for the marijuana. When he reported back to work the following day “a supervisor called me on my cell phone before my tour, and told me that I had to go to the facility because there was a situation that happened before my tour. When I got there, they told me they notified IAB, the Lieutenant had told me that he made a notification because I failed to voucher the marijuana.” The Respondent admitted that he did not notify IAB because he was not given the opportunity to do so and because he was told to stay in his office by his supervisor. He stated “they were making the phone calls and notifications.” When he was asked if he was aware that he was suppose to make the notification he stated “I was aware, but in this Department you have to wait until a supervisor tells you what to do.”

The Respondent further testified that he should have received a command discipline from within the precinct, “it should have never gone this far because of the fact that you don’t re-arrest a prisoner for marijuana, because it’s not a public view, as the law states. It’s a violation, it’s not a crime.”

On cross-examination, the Respondent testified that the prisoner was originally arrested for possession of marijuana. He further stated that he learned that the prisoner was re-arrested the following day on the additional marijuana that was found on his person. He was then asked why did he not let Sanders handle the processing of the marijuana and he replied “like I said before, like I said before into the court room, you

have to understand that we are working under tough conditions. I can not allow one officer to leave that facility so that a prisoner could get hurt or other officers will get hurt. We are dealing with prisoners. It's very dangerous for me to tell that officer to go to the precinct, voucher the property and make a re-arrest; I would be putting the lives of officers and prisoners in danger if I did that."

The Respondent could not recall whether Sanders actually handed him the marijuana or whether he sent other officers to get the marijuana. He explained that "all I know is I was in possession of the alleged marijuana and when I was in possession of the alleged marijuana, I attempted to have it vouched by two officers, but those officers had to send a prisoner to the hospital so I wasn't going to jeopardize the prisoner's safety, the officers safety and the fact that the prisoner might escape."

The Respondent stated that if the prisoner was to be re-arrested he would actually remain in Central Booking. He added "for [a] re-arrest, all you have to do is a supplement, you don't have to take the prisoner out." He further explained that the danger in re-arresting the prisoner is "on the first floor, for example, we have approximately sixty prisoners that are allowed on the first floor of that facility. If I take one - - I have three officers on that floor. If I take one of those officers to voucher anything or do any other type of job, then the two officers have to deal with sixty prisoners on that specific floor. It's putting not only the officer's lives in danger, but the supervisors' lives in danger, and as well as another prisoner that might get into an altercation at that facility and we need to assist that prisoner. It is impossible for an officer to leave that facility area." When asked how long does it takes to voucher a piece

of property he stated "it could take forty-five minutes, some officers take three hours to voucher property."

The Respondent further testified that when he put the marijuana on his desk he did not remain at his desk the entire time that the marijuana was present because if there was an incident on one of the other floors, as a supervisor he would have had to go and supervise the situation. He added that where his desk is located there is a lot of traffic with different type of personnel passing through that area, including personnel from the fire department, emergency medical services and prisoners that are transported back and forth from the area where his desk is located. He acknowledged that when Officer Sanders approached him she alerted him to what she believed to be marijuana and she informed him of her intent to re-arrest the prisoner. He further acknowledged when Sanders told him that she wanted to re-arrest the prisoner, he told her that he would handle the job. The Respondent, however, did not re-arrest the prisoner, nor did he arrange for another officer to re-arrest him or issue him a summons for the possession of marijuana.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y 2d 222 (1974). The Respondent was appointed on June 30, 1995. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent pleaded Guilty to: failing to safeguard marijuana recovered from a prisoner, failing to prepare a Property Clerk's Invoice Worksheet, failing to arrange for the re-arrest of the prisoner who possessed the marijuana and failing to inform his commanding officer of the missing evidence. The Respondent admitted during his testimony that he took possession of the marijuana from Sanders and left it unsecured and out in the open on his desk, which he admitted was a location exposed to heavy traffic of personnel, including prisoners, passing through the area. The Respondent, however, after admitting his guilt then proceeded to make a number of unconvincing excuses why he was being unreasonably punished for his misconduct.

He testified that on the day in question there were only three supervisors working, instead of the usual 6 to 9, and he was too busy to give the appropriate attention to the evidence that was in his possession. He also testified that the reason he left the marijuana on his desk was because there was no safe to put it in. He explained that "If there was a safe, I could probably put it in the safe and this matter would never have happened." He also did not believe that the possession of marijuana by the prisoner was a serious matter because the "prisoner should have just gotten a summons and that would have been it." He also reasoned that he did not know if the substance was marijuana because it had not been tested and he claimed that he could not assign an officer to voucher the marijuana because "it's very dangerous for me to tell that officer to go to the precinct, voucher the property and make a re-arrest; I would be putting the lives of officers and prisoners in danger if I did that."

The Respondent concluded that he should only have received a command discipline from within the command because "it should have never gone this far because

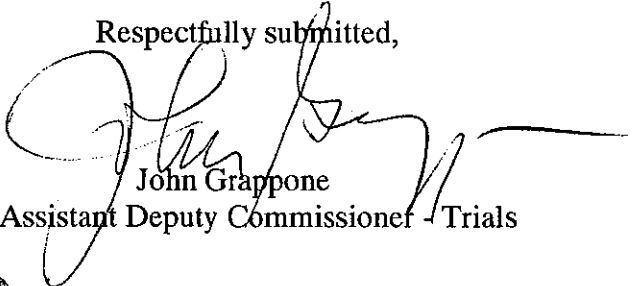
of the fact that you don't re-arrest a prisoner for marijuana, because it's not a public view, as the law states. It's a violation, it's not a crime." In addition, his reason for not notifying IAB of the missing evidence, even though he knew he was required to, was that he was not given the opportunity because he was told to stay in his office by his supervisor and "in this Department you have to wait until a supervisor tells you what to do."

In this Court's opinion, once the Respondent took possession of the marijuana it was his responsibility to safeguard it. Safeguarding does not mean leaving evidence out in the open on a desk where there is heavy traffic of personnel, including prisoners, passing by during the course of the day. Safeguarding does mean vouchering the evidence to insure that it will not be misplaced or stolen.


Based on the foregoing, this Court finds that the Department's recommended penalty of a forfeiture of 15 vacation days is an appropriate penalty under the facts in this case.

Accordingly, this Court recommends that the Respondent forfeits a penalty of 15 vacation days.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner - Trials

APPROVED


NOV 10 2008
RAYMOND W. KELLY
POLICE COMMISSIONER